ARC 3183C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

These amendments update subrule 75.23(3) to increase the statewide average cost of nursing facility services to a private-pay person. The figure is being revised to reflect the increase in the cost of private-pay rates for nursing facility care in Iowa. The change is not related to rates paid by Medicaid for nursing facility care.

The figure is used to determine a period of ineligibility when an applicant or recipient transfers assets for less than fair market value. When assets are transferred to attain or maintain Medicaid eligibility, the individual is ineligible for Medicaid payment of long-term care services. The period of ineligibility is determined by dividing the amount transferred by the statewide average cost of nursing facility services to a private-pay person.

The Department conducted a survey of the freestanding nursing facilities, the hospital-based skilled facilities, and special population facilities in Iowa to update the statewide average cost for nursing facilities. The average private-pay cost of nursing facility services increased from $5,809.13 to $6,269.63.

These amendments also update paragraph 75.24(3)"b," which sets forth the average charges for nursing facilities, psychiatric medical institutions for children (PMICs), and mental health institutions (MHIs). These average charges are used to determine the disposition of the income of a medical assistance income trust (MAIT).

Nursing facility amounts are not related to the rates paid by Medicaid for nursing facility care. For this purpose, the Department's survey for statewide average private-pay charges at the nursing facility level of care included only the freestanding nursing facilities in Iowa. Hospital-based skilled facilities and special populations units were not included in the survey, since recipients are allowed to use the average cost of the specialized care.

- The average charge to a private-pay resident of a nursing facility increased from $5,267 per month to $5,829 per month.
- The average charges for PMICs and MHIs are based on Medicaid rates because Medicaid is the primary payer of these services.
- The average charge for care in a PMIC remained the same as last year at $7,999 per month.
- The average charge for care in an MHI decreased from $29,708 per month to $29,312 per month.

The increase in the average charge to a private-pay resident of nursing facility care may result in more individuals who qualify for medical assistance by decreasing the period of ineligibility for a transfer of assets and allowing more individuals to qualify for medical assistance with MAITs because the income limit at which all income assigned to a MAIT is considered to be available for Medicaid eligibility purposes is increased. The decrease in the average charge for care in an MHI may allow fewer individuals to qualify for medical assistance with MAITs because the income limit at which all income assigned to a MAIT is considered to be available for Medicaid eligibility purposes is decreased.

The maximum Medicaid rate for intermediate care facilities for individuals with an intellectual disability (ICF/IDs) is addressed in a companion rule making (see **ARC 3182C** published herein).

Federal law (42 U.S.C. §1396p(c)(1)(E)(i)-(ii)) requires that the period of ineligibility for a transfer for less than fair market value must be based on "the average monthly cost to a private patient of nursing facility services in the State" or, at the option of the State, on the average "in the community in which the individual is institutionalized." In addition and pursuant to long-standing state administrative rules, Iowa uses the statewide average. Also, Iowa Code sections 633C.1(4) and 633C.1(8) through 633C.1(10) direct the Department to publish the statewide average charges and maximum Medicaid rate used for determining disposition of MAITs.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3017C** on April 12, 2017. The Department received a comment from one respondent. The respondent's comment and the Department's response are as follows:

Comment: The respondent did not agree with the final figures for the average private-pay cost of nursing facilities and the methodology used to calculate those figures.

Department response: The respondent stated the methodology used to calculate the average private-pay costs of nursing facility services was incorrect. The respondent did not agree with the decrease in the average private-pay cost of nursing facilities services from $5,809.13 to $5,689.06. The Department considered this comment and reviewed its figures used to calculate this year's nursing facility, skilled nursing facility, and special population facility average private-pay rates. After review, the Department determined that the average private-pay cost of nursing facilities increased from $5,809.13 to $6,269.63 per month and agreed to revise subrule 75.23(3) to reflect the higher amount as follows:

"**75.23(3)** *Period of ineligibility.* The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual's spouse) on or after the look-back date specified in subrule 75.23(2), divided by the statewide average private-pay rate for nursing facility services at the time of application. The department shall determine the average statewide cost to a private-pay resident for nursing facilities and update the cost annually. For the period from July 1, 2017, through June 30, 2018, this average statewide cost shall be $6,269.63 per month or $206.24 per day."

The Council on Human Services adopted these amendments on June 14, 2017.

Pursuant to Iowa Code section 17A.5(2)"b"(1)(b), the Department finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective July 1, 2017, because the amendments confer a benefit on the public. The average private-pay cost of nursing facilities increased resulting in more income being eligible for inclusion in the client's MAIT.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments became effective July 1, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 75.23(3) as follows:

75.23(3) *Period of ineligibility.* The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual's spouse) on or after the look-back date specified in subrule 75.23(2), divided by the statewide average private-pay rate for nursing facility services at the time of application. The department shall determine the average statewide cost to a private-pay resident for nursing facilities and update the cost annually. For the period from July 1, ~~2016~~ 2017, through June 30, ~~2017~~ 2018, this average statewide cost shall be ~~$5,809.13~~ $6,269.63 per month or ~~$191.09~~ $206.24 per day.

ITEM 2. Amend subparagraphs **75.24(3)"b"(1)** and **(3)** as follows:

(1) The average statewide charge to a private-pay resident of a nursing facility is ~~$5,267~~ $5,829 per month.

(3) The average statewide charge to a resident of a mental health institute is ~~$29,708~~ $29,312 per month.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.